

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

NOV - 2 2007

RONALD H. TONKIN
Plaintiff

vs

MICHAEL CHERTOFF, Secretary
of Homeland Security
Defendant and the
DEPARTMENT OF HOMELAND
SECURITY
Defendant

*
*
*
*
*
*
*
*
*
*

Michael N. Milby, Clerk of Court

CIVIL ACTION NO:

H-07 -3715

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Ronald H. Tonkin, plaintiff brings this action against Michael Chertoff, Secretary of Homeland Security and the Department of Homeland Security pursuant to the provision of the Freedom of Information Act, 5 U.S.C. 552, as amended, to order the production of Agency records, consisting of all records prepared by the Department of Homeland Security and its legacy agency United States Customs Service as set forth in Exhibit A attached hereto and made a part hereof.

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. 552 (a)(4)(B).

2. Plaintiff, Ronald H. Tonkin, is an attorney at law licensed in Houston, Harris County, Texas and is the requester of the withheld records requested in Exhibit A.

3. Defendants are in possession of and have control over the records to which Plaintiff seeks as noted in Exhibit A.

4. By letter of August 16, 2005 to the defendant Michael Chertoff, plaintiff requested all records set forth in Exhibit A attached hereto. By letter of January 30, 2006 the agency would neither confirm or deny the existence of any records responsive to plaintiff's request. See Exhibit B attached hereto and made a part hereof. By letter of February 3, 2006 plaintiff appealed the denial of the request of August 16, 2007 to the appropriate department of the Department of Homeland Security.

5. As of the filing of this complaint the agency has failed to act upon plaintiff's FOIA request.

6. Plaintiff has a statutory right to the records which he seeks and there is no legal basis for the defendants refusal to disclose these records to plaintiff.

WHEREFORE, Plaintiff requests that the Court:

1. Declare that defendants' refusal to disclose the records requested by plaintiff is unlawful;

2. Order the defendants to make the requested records available to plaintiff;
3. Award plaintiff his costs and attorneys fees for the prosecution of this action; and
4. Grant such other and further relief as the Court may deem just and proper.

Dated: November 2, 2007

Respectfully Submitted,



Ronald H. Tonkin
2777 Allen Parkway, Suite 1080
Houston, TX 77019
Tel: 713-942-9111
Fax: 713-942-0102
TBA# 20104500

Ronald H. Tonkin

Attorney At Law

1080 Riviana Building

2777 Allen Parkway

Houston, Texas 77019

Telephone: 713-942-9111

Fax: 713-942-0102

August 16, 2005

Honorable Michael Chertoff
Secretary of the Department of Homeland Security
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Re: Freedom of Information Request regarding
Gene Patin

Dear Secretary Chertoff,

This is a request under the Freedom of Information Act.

I request that a copy of the following documents be provided to me.

1. A copy of the confidential informant file of Gene Patin.
2. A copy of the contract executed by Gene Patin and the United States Customs Service wherein he acted as a confidential informant.

As your subordinates are fully aware since I have been corresponding with the Houston SAC office for over one year as Mr. Patin's attorney in his attempt to obtain his award for services rendered to U.S. Customs wherein the agency was able to obtain substantial fines and penalties from K.F. Industries. I am the representative of Gene Patin and he is desirous of obtaining the above describe information.

I am willing to pay fees for this request.

I ask that my request expedited processing and that you provide this information in the time period required by the Freedom of Information Act.

EXHIBIT

A

The information requested can be sent to me at my office set forth in the letterhead.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Ronald H. Tonkin".

Ronald H. Tonkin

cc: Acting Special Agent in Charge
Robert P. Rutt
Department of Homeland Security
Immigration and Customs Enforcement
4141 North Sam Houston Parkway-Suite 300
Houston, Texas 77032

Gene Patin

Office of Investigations

U.S. Department of Homeland Security
425 I Street, NW, Room 4038
Washington, DC 20536



U.S. Immigration and Customs Enforcement

JAN 30 2006

DIS 2-01 OI:MS:ID
05-FOIA-19302 GFC

Ronald H. Tonkin, Esq.
Attorney at Law
1080 Riviana Building
2888 Allen Parkway
Houston, Texas 77019

Dear Mr. Tonkin:

This is in response to your letter dated August 16, 2005, wherein you requested, pursuant to the Freedom of Information Act (FOIA) and/or Privacy Act, access to records regarding a confidential informant file on your client, Mr. Gene Patin.

This agency will neither confirm nor deny the existence of any records responsive to your request.¹

You may appeal this decision, in writing, within 35 days after the date of this determination to the Privacy Office, Department of Homeland Security, FOIA Appeals, 245 Murray Lane, SW., Building 410, Washington, D.C. 20528.

Enclosed is an information sheet pertaining to the exemptions from disclosure under the FOIA, your rights to administrative appeal and judicial review.

Sincerely,

A handwritten signature in black ink, appearing to read "M. H. Fields, Jr.", written over a horizontal line.

Marshall H. Fields, Jr.
Acting
Chief, Information Disclosure Unit
Mission Support Division

¹ Notwithstanding the above denial of your request, and as contemplated by the provisions of the Privacy Act, 5 U.S.C. 552a, section (b), if any records exist, they may not be disclosed without the prior written consent of the individual to whom they pertain.

EXHIBIT

B

RECEIVED FEB 02 2006

**Definitions of the Exemptions
Under The Freedom of Information Act (5 U.S.C. 552)**

Pursuant to 5 U.S.C. 552 (b), the Freedom of Information Act does not apply to matters that are –

- **(1)(A) specifically authorized under rules established by an Executive Order to be kept secret in the interest of national security defense or foreign policy and (B) are in fact properly classified under such order;**
- **(2) related solely to the internal personnel rules and practices of an agency;**
- **(3) specifically exempt from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public so as to leave no discretion on the issue or, (B) established particular criteria for withholding or refers to particular kinds of matters to be withheld;**
- **(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;**
- **(5) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;**
- **(6) personnel and medical files and similar files the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;**
- **(7) records of information compiled for law enforcement purposes, but only to the extent that the production of such records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,**
 - (B) would deprive a person of a right to a fair trial or impartial adjudication,**
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,**
 - (D) could reasonably be expected to disclose the identity of a confidential source, including State, local or foreign agency or authority, or any private institution which furnished information on a confidential basis, and for a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,**
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or**
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;****
- **(8) contained in or related to examination, operating or condition reports prepared by or for any agency responsible for the regulation or supervision of financial institutions; or**

Ronald H. Tonkin

Attorney At Law

1080 Riviana Building

2777 Allen Parkway

Houston, Texas 77019

Telephone: 713-942-9111

Fax: 713-942-0102

February 3, 2006

Privacy Office

Department of Homeland Security

FOIA

245 Murray Lane, SW, Building 410

Washington, DC 20528

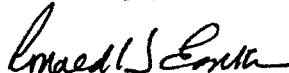
Re: FOIA Request of Gene Patin-August 16, 2005

Dear Sir/Madam:

I am in receipt of Marshall H. Fields, Jr.'s letter to me of January 30, 2006 wherein he has advised me of the right to appeal the determination of your agency.

Please consider this letter my appeal from the decision of the agency on Mr. Patin's behalf. Mr. Patin has waived his privacy rights in a document which has already been submitted to your office.

Sincerely yours,



Ronald H. Tonkin

cc: Gene Patin

EXHIBIT

C

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RONALD H. TONKIN

(b) County of Residence of First Listed Plaintiff Harris
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ronald H. Tonkin, 2777 Allen Parkway, Suite 1080, Houston, TX 77019
 713-942-9111

DEFENDANTS

MICHAEL CHERTOFF and
 DEPARTMENT OF HOMELAND SECURITY

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES OF United States Courts
 Southern District of Texas
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

Attorneys (If Known)

NOV - 2 2007

Michael N. Milby, Clerk of Court

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

5 U.S.C. 552
 Freedom of Information Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____